IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.1046 of 2000
With
CRIMINAL APPEAL No.1067 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SHANKUTALA W/O RAGHUKAMPA SHETTI - Appellant
Versus
STATE OF GUJARAT - RESPONDENT

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Appearance :

MS SEJAL VYAS WITH MR PM VYS	for Appellant in Criminal Appeal No.1046 of 2000
MS SADHANA SAGAR	for Appellant in Criminal Appeal No.1067 of 2000
MR HM PRACHCHHAK,	Additional Public Prosecutor for Respondent State in both Appeals.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE J.R.VORA

Date : 27-28/03/2006
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Criminal Appeal No.1046 of 2000 filed under

Section 374(2) of the Code of Criminal Procedure, 1973 (“the Code” for short) is directed against judgment dated September 30, 2000 rendered by the learned Additional Sessions Judge, Ahmedabad (Rural), Mirzapur, Ahmedabad, in Sessions Case No.110 of 1996 by which the appellant, i.e. Ms.Shankutala, who was original accused No.1, is convicted for commission of offences punishable under Sections 302, 120B and 201 of the Indian Penal Code (“IPC” for short), and sentenced to suffer R.I. for life and fine of Rs.1,000/-, in default S.I. for three months, for commission of offence punishable under Section 302 IPC as well as R.I. for one year and fine of Rs.500/-, in default S.I. for one month, for commission of offence punishable under Section 120B IPC and R.I. for one year and fine of Rs.500/-, in default S.I. for three months, for commission of offence punishable under Section 201 IPC.

Criminal Appeal No.1067 of 2000 filed under Section 374(2) of the Code is also directed against judgment dated September 30, 2000 delivered by the same learned Judge in Sessions Case No.110 of 1996 by which the appellant therein, who was original accused No.2, has been convicted for commission of offences punishable under Sections 302, 120B and 201 IPC, and visited with the punishments imposed on the original

accused No.1.

As both the appeals raise common question of facts as well as law and arise out of common judgment delivered in Sessions Case No.110 of 1996, this Court proposes to dispose them of by this common judgment.

2. The facts emerging from the record of the case are as under:

Ms.Nirmalaben Natwarlal, the mother of deceased Ashok, was residing in Building No.400/1 situated in Sector No.5, Chankyapuri, Ahmedabad, with her elder son Mahendrabhai Vyas and his wife and children. Mr.Mahendrabhai Vyas is a Sales-Tax & Income-Tax Practitioner. Ms.Nirmalaben had three sons. Younger to Mahendrabhai was deceased Ashok. Deceased Ashok was unmarried and was serving in a club known as 'Dream World Gymkhana' wherein gambling activities were going on. The youngest son of Ms.Nirmalaben named Mukesh was serving in Police Department and was residing in Police Lines. On November 1, 1995, deceased Ashok came to his residence at about 9.00 p.m. or 10.00 p.m., and informed his mother, i.e. Ms.Nirmalaben, that after taking a stroll for half-an-hour, he would take dinner. So saying, the deceased left his house and went to the house of his friend

Ratansinh. After sometime, Manish, son of Ratansinh, came to the house of Ms.Nirmalaben and asked Nirmalaben to pack food prepared by her for deceased Ashok to be taken to his house. Ms.Nirmalaben had cooked hotchpotch. Therefore, she gave hotchpotch to Manish in a utensil to be carried to his house. During the night, Ashok did not return home. Therefore, in the early morning of November 2, 1995, Ms.Nirmalaben sent her grandson Mehul to the house of Ratansinh to inquire about Ashok. Mehul accordingly went to the house of Ratansinh. Mehul was informed by Ratansinh that Ashok had left his house with the appellant in Criminal Appeal No.1046 of 2000 and that Ashok had not stayed in his house during the night between November 1, 1995 and November 2, 1995. Mehul, in turn, conveyed the information received by him from Ratansinh to Ms.Nirmalaben. Thereupon, search of Ashok was made at the houses of relatives of Ms.Nirmalaben, but whereabouts of Ashok could not be known. Meanwhile, on November 3, 1995 at about 10.30 a.m., one Mr.Jamubhai Chandansinh Dholetar of Village Godhavi informed Mr.J.K.Chavda, who was then Police Inspector of Sanand Police Station, that a dead body was lying in the pond of Village Godhavi. On receipt of the information, PI Mr.Chavda registered Accidental Death Case No.43 of 1995 and sought permission to hold inquest. He went to the pond of Village Godhavi with Dog Squad,

photographer, fingerprint operator, etc. On reaching the pond, Mr.Chavda found that there were two plastic bags in which cut-pieces of human body were placed. In presence of panch-witnesses, Mr.Chavda searched the bags. From one transparent polyethylene bag, two chopped legs were found whereas from another bag, trunk of human body was found. Mr.Chavda made further search in the pond itself to find out whether there was/were bag/bags containing other parts of the human body. The search resulted into find of third transparent polyethylene bag containing the human head. The photographer, who was summoned, took photographs of the parts of the human body recovered from the plastic bags. Mr.Chavda held inquest on parts of the human body found in presence of panch-witnesses. From the transparent polyethylene bag containing human head, a black coloured twine and blade of Supermax Company, were found. They were seized under a panchnama. From the transparent polyethylene bags containing parts of human body, two bricks and stones were also found, which were seized under a panchnama. The parts of the human body found were sent to Sanand Hospital for postmortem examination. After the parts of the human body were sent to Civil Hospital, Sanand, for postmortem examination, Mr.Chavda held discussion with Medical Officer of Sanand Hospital. The Medical Officer of

Sanand Hospital opined that postmortem of the parts of the human body should be conducted at Civil Hospital, Ahmedabad. Therefore, after filling in necessary particulars in Inquest Form, parts of the human body were sent to Civil Hospital, Ahmedabad, for postmortem examination. On receipt of the parts of the human body, Dr.Ganesh Pyarelal Gotelkar of Civil Hospital informed PI Mr.Chavda that Dr.J.N.Amin, who was Medical Officer of Sanand Hospital, should also participate in the examination of parts of the human body. Accordingly, Dr.J.N.Amin was informed, who went to Civil Hospital, Ahmedabad, and assisted Dr.Gotelkar in conducting postmortem examination of the parts of the human body. Again, on November 4, 1995, three other plastic bags containing parts of human body were found from the pond of village Godhavi. In one bag, upper part of the trunk of human body having clean cut margin anteriorly passing through lower part of neck was found whereas from the second bag, thigh and lower part of trunk of right side were found and from third bag, left thigh and lower part of the trunk of left side along genitals were found. The parts of the human body found on November 4, 1995 were also sent for postmortem examination to Civil Hospital, Ahmedabad. The postmortem examination of parts of the human body found on November 4, 1995 was conducted by a panel of

doctors comprising Dr.Ganesh Gotelkar and Dr.Dharmesh Patel. Thereafter, necessary news were flashed in newspapers that parts of human body were found from the pond of Village Godhavi. As Ashok was missing since the night of November 1, 1995, Ms.Nirmalaben asked her son Mahendrabhai to contact Police Inspector Mr.Chavda of Sanand Police Station and to ascertain whether the parts of human body found were those of Ashok. Accordingly, Mahendrabhai contacted PI Mr.Chavda of Sanand Police Station, who informed Mahendrabhai that the parts of human body found on November 3, 1995 and November 4, 1995 were sent to Civil Hospital, Ahmedabad. Mahendrabhai, therefore, went to Civil Hospital, Ahmedabad, and after looking at the human head and other parts of the human body, identified that the parts of the human body were those of his brother Ashok. Before the dead body of deceased Ashok was identified by his brother Mahendrabhai, PI Mr.J.K.Chavda had lodged complaint of murder of an unknown person against unknown persons on behalf of the Government and forwarded his report under Section 157 of the Code to the competent authority. He, thereafter, had taken over investigation of the complaint lodged by him. However, the identification of the dead body as that of deceased Ashok revealed that the offences had taken place in Chankyapuri area, which falls within the jurisdiction of Ghatlodiya

Police Station, Ahmedabad City. Therefore, the complaint lodged by PI Mr.Chavda was transferred to Ghatlodiya Police Station, Ahmedabad City, for further investigation. The complaint of Mr.Chavda was investigated by Senior Police Inspector Mr.Parmeshwar Prasad Sarveji Pande of Ghatlodiya Police Station. He recorded statements of Ms.Nirmalaben, Mahendrabhai, Ratansinh, etc. The investigation revealed that deceased Ashokbhai had illicit relations with the appellant in Criminal Appeal No.1046 of 2000 and, therefore, the said appellant had entered into conspiracy with her husband to kill the deceased and caused death of the deceased after which the body of the deceased was cut into pieces and the cut-pieces of the body of the deceased were placed in different polyethylene bags, which were carried by the appellant in Criminal Appeal No.1067 of 2000 on his cycle to the pond situated at Village Godhavi, and the bags containing parts of the dead body with bricks and stones were thrown in the pond of Village Godhavi. On the basis of material collected during the course of investigation, the Investigating Officer was satisfied that the appellants were involved in commission of murder of the deceased. Therefore, they were summoned at the Police Station of November 6, 1995 for interrogation after securing their residence. During the interrogation, the appellants could not give

satisfactory replies or explanations regarding the death of deceased. Therefore, in their presence and in the presence of panch-witnesses, their residence was searched on November 6, 1995, which resulted into find of bloodstained frock, *lungi,* etc. As bloodstained cloths were found, the appellants were arrested on November 7, 1995. The incriminating articles seized during the course of investigation were sent to Forensic Science Laboratory (F.S.L.) for analysis. On completion of the investigation, the two appellants were charge-sheeted in the Court of learned Chief Judicial Magistrate, Ahmedabad (Rural), Mirzapur, Ahmedabad, for commission of offences punishable under Sections 302, 120B and 201 IPC. As the offence punishable under Section 302 IPC is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Ahmedabad (Rural), Mirzapur, Ahmedabad, where it was numbered as Sessions Case No.110 of 1996.

3. The learned Additional Sessions Judge, Ahmedabad (Rural), Mirzapur, Ahmedabad, to whom the case was made over for trial, framed necessary charge against the two appellants at Exh.3. It was read over and explained to them. They pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined: (1) mother of deceased Ashok,

i.e. Ms.Nirmalaben Natwarlal as P.W.-1 at Exh.8; (2) Ms.Pramilaben Ratansinh as P.W.-2 at Exh.9; (3) Mahendrakumar Natwarlal as P.W.-3 at Exh.15; (4) Mehul Mahendrakumar Vyas as P.W.-4 at Exh.16; (5) Ratansinh Ranvirsinh as P.W.-5 at Exh.19; (6) panch Kishorebhai Dahyabhai as P.W.-6 at Exh.20; (7) panch Pravinsinh Sursing Vaghela as P.W.-7 at Exh.26; (8) Navalsinh Kalubha Jadeja as P.W.-8 at Exh.32; (9) Dr.Jayesh Nathalal Amin, who was then Medical Officer of Sanand Government Hospital, as P.W.-9 at Exh.34; (10) photographer Sunil Nandlal Dubal as P.W.-10 at Exh.35; (11) Circle Officer Jayantilal Manilal Patel as P.W.-11 at Exh.38; (12) Jalubhai Bijalbhai Desai as P.W.-12 at Exh.41; (13) expert from F.S.L., i.e. Amrutlal Vashrambhai Hingrajiya as P.W.-13 at Exh.43; (14) panch Nigambhai Ranchhodbhai Nayak as P.W.14 at Exh.46; (15) Scientific Officer Ms.Minaben Rajnikant as P.W.-15 at Exh.48; (16) Scientific Expert Anilkumar Madhukant Mehta as P.W.-16 at Exh.51; (17) Dr.Ganesh Pyarelal Gotelkar as P.W.-17 at Exh.53; (18) Jamubhai Chandansinh as P.W.-18 at Exh.56; (19) panch Shambhulal Mulchand Sharma as P.W.-19 at Exh.62; (20) panch Mohansinh Sardarsinh as P.W.-20 at Exh.64; (21) Investigation Officer, Senior Police Inspector of Ghatlodiya Police Station Mr.Parmeshwar Prasad Sarveji Pande at P.W.-21 at Exh.70; and, (22) Police Inspector Mr.Jashwantsinh Kacharaji Chavda as P.W.-22 at Exh.79,

to prove its case against the appellants. The prosecution also produced documentary evidence such as copy of ration card found during the search of residence of the appellants at Exh.25; inquest report at Exh.29; panchnama of place of incident at Exh.31; panchnama of different plastic bags containing pieces of the human body at Exh.33; map of place of incident at Exh.40; report of F.S.L. from Mr.Hingrajiya at Exh.44; discovery panchnama of pant of the appellant in Criminal Appeal No.1067 of 2000 at Exh.47; F.S.L. report prepared by Scientific Officer Ms.Minaben at Exh.50; report of biological and serological test carried by Scientific Expert Mr.Anilkumar Mehta at Exh.50; postmortem report prepared by Dr.Ganesh Gotelkar with the help of Dr.J.N.Amin, the then Medical Officer of Sanand Civil Hospital, of human organs found from four transparent polyethylene bags, which were recovered from the pond of Village Godhavi on November 3, 1995 at Exh.54; another postmortem report prepared by Dr.Gotelkar with the help of Dr.Dharmesh Patel of the parts of the human body, which were recovered from the polyethylene bags found from the pond of Village Godhavi on November 4, 1995 at Exh.55; panchnama indicating identification of shoe and pant of the deceased by his brother Mahendra at Exh.63, panchnama indicating recovery of different part of human body placed in polyethylene bags at

Exh.67; panchnama of place from where plastic bags containing part of human body were recovered at Exh.68; panchnama indicating recovery of cycle at the instance of the appellant in Criminal Appeal No.1067 of 2000 at Exh.71; panchnama indicating that an attempt was made to recover sickle like weapon known as *katti* at the instance of the appellant in Criminal Appeal No.1046 of 2000 at Exh.72; panchnama indicating seizure of blue-coloured nicker of the deceased at Exh.76; complaint lodged by Mr.J.K.Chavda, who was then PI of Sanand Police Station at Exh.80; panchnama of house No.492 situated in Sector No.5 of Chankyapuri Society at Exh.82; report of Scientific Officer at Exh.83; etc. in support of its case against the appellants.

4. After recording of evidence of prosecution witnesses was over, the learned Judge of the trial Court explained to the appellants the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements as required by Section 313 of the Code. In her further statement, the appellant in Criminal Appeal No.1046 of 2000 claimed that a false case was foisted upon her by the prosecution whereas the appellant in Criminal Appeal No.1067 of 2000 claimed in his further statement that on the day of incident, he was not

present in Ahmedabad, but was present at Bombay, and a false case was lodged against him. However, no defence evidence was adduced by any of the appellants to support the claim advanced in their respective further statements.

5. On appreciation of evidence adduced by the prosecution, the learned Judge noticed that the whole case of the prosecution was based on circumstantial evidence and no direct evidence was tendered by the prosecution to bring home the guilt of the appellants. The learned Judge held that the dead body of deceased Ashok was recovered at the instance of Jamubhai, who was resident of Village Godhavi. After referring to the testimony of Dr.Jayesh Amin and that of Dr.Gotelkar, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that deceased Ashok died a homicidal death. The learned Judge on perusal of the testimony of Ms.Nirmalaben as well as that of Ms.Pramilaben and testimony of Mr.Mehul held that the motive for crime in question was illicit relations between the appellant in Criminal Appeal No.1046 of 2000 and the deceased. On consideration of the testimony of witness Pramilaben and witness Ratansinh, the learned Judge held that it was proved by the prosecution beyond reasonable doubt that the deceased was seen last alive in the company

of the appellant in Criminal Appeal No.1046 of 2000. The learned Judge deduced that after committing murder of deceased Ashok, his dead body was cut into pieces and those pieces were placed in polyethylene bags with bricks and stones and thereafter, the bags were thrown in the pond of Village Godhavi, which were recovered on November 3, 1995 and November 4, 1995. The learned Judge referred to the testimony of panch Kishorebhai and held that it was proved satisfactorily by the prosecution that during the search of house of the appellants, bloodstained clothes were recovered. The learned Judge further held that the cloths belonging to the appellants were found to have been stained with the same group of blood as that of the deceased, which indicated that the appellants were in close proximity of the deceased when the deceased was fatally wounded. The learned Judge concluded that the combined effect of all the circumstances proved left no reasonable ground for conclusion consistent with the innocence of the appellants and that they were consistent only with hypothesis of the guilt of the appellants. The learned Judge noticed that the plea of *alibi* advanced by the appellants in Criminal Appeal No.1067 of 2000 could not be probabilized. In view of abovereferredto conclusions, the learned Judge has convicted both the appellants under Sections 302, 120B and 201 IPC and imposed sentences referred to earlier by judgment

dated September 30, 2000 giving rise to abovenumbered two appeals.

6. This Court has heard Ms.Sejal Vyas, learned counsel appearing for the appellant in Criminal Appeal No.1046 of 2000 as well as Ms.Sadhna Sagar, learned counsel appearing for the appellant in Criminal Appeal No.1067 of 2000, and Mr.H.M.Prachchhak, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

7. The fact that deceased Ashok died a homicidal death is not disputed at all by the learned counsels for the appellants before this Court. The different panchnamas prepared at the time when transparent polyethylene bags containing parts of the human body were found, would indicate that dead body was cut into pieces. The testimony of Dr.Jayesh Nathalal Amin recorded at Exh.34 as well as that of Dr.Ganesh Gotelkar recorded at Exh.53 indicates that "*death of the deceased was due to carnio cerebral damage consequent upon blunt force impact to head".* It is nobody's case that the deceased had sustained injuries

mentioned by the two doctors in an accident nor it is the case of anyone that those injuries were self-inflicted. Under the circumstances, the finding recorded by the learned Judge of the trial Court that it is satisfactorily proved by the prosecution beyond reasonable doubt that the deceased died a homicidal death, being eminently just is hereby upheld.

8. It is also satisfactorily proved that parts of the human body, which were recovered from the pond of Village Godhavi on November 3, 1995 and November 4, 1995, were those of body of deceased Ashok. The body of deceased Ashok was identified by his brother Mahendrabhai at Civil Hospital, Ahmedabad. The identification of deceased Ashok by his brother Mahendrabhai is also not in dispute before this Court. Thus, it is satisfactorily proved that deceased Ashok was murdered and thereafter his body was cut into pieces and those cut-pieces with bricks and stones were placed in different transparent polyethylene bags, which were thrown into the pond of Village Godhavi.

9. It is relevant to notice that the prosecution has not claimed that the incident of murder of deceased Ashok was witnessed by anyone and no direct evidence regarding commission of murder of deceased

Ashok by the appellants is tendered before the Court. The prosecution case solely rests on the circumstantial evidence. Therefore, before dealing with the circumstantial evidence on record, it would be worthwhile to notice the law on the point.

10. The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances can not fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not". In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established and all the facts so established, should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency and they should be such as

to exclude every hypothesis except the one sought to be proved. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is, or are not decisive. Where a case rests squarely on circumstantial evidence, the various sets of circumstantial evidence should be taken into consideration and their total effect should be such that they must lead unerringly to the guilt of the accused. Each fact must be proved individually and only thereafter the sum total of the proved facts has to be taken into consideration, but this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must prove each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might

be. In **Sharad v. State of Maharashtra, A.I.R. 1984 SC 1622**, after referring to earlier case law, the Supreme Court has summarized the conditions to be fulfilled in a case based on circumstantial evidence as under: (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may' be established, (ii) the fact so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (iii) the circumstances should be of conclusive nature and tendency; (iv) they should exclude every possible hypothesis except the one to be proved; (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused; and (vi) where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court.

10.1 If the aforesaid various conditions are fulfilled, only then a Court can use a false

explanation or a false defence as an additional link and not otherwise. As observed earlier, if the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should be no missing links in the case, yet it is not essential that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, and to human conduct and their relations to the facts of the particular case.

Having noticed relevant principles governing a case, based on circumstantial evidence, this Court

proposes to consider the question whether the case against the appellants is proved.

11. On review of the evidence adduced by the prosecution, this Court is of the opinion that the prosecution relied upon following circumstances to prove that the appellants were the persons who committed murder of deceased Ashok.

(1) The motive, i.e. illicit relations between the deceased and the appellant in Criminal Appeal No.1046 of 2000, which prompted the appellants to murder the deceased;

(2) The deceased and the appellant in Criminal Appeal No.1046 of 2000 were last seen together on the fateful night between November 1, 1995 and November 2, 1995;

(3) After murder, the dead body of the deceased was cut into pieces and the cut-pieces of the body were placed with stones and bricks in seven transparent plastic bags, which were carried by the appellant in Criminal Appeal No.1067 of 2000 on his cycle to the pond of Village Godhavi and the plastic bags were thrown into the pond;

(4) The articles such as frock, *lungi,* pillow-cover, etc. which were recovered from the house of the appellants on November 6, 1995 had the same group of blood as that of the deceased which, in turn, established that the appellants were in close proximity of the deceased when the deceased was fatally wounded;

(5) False plea of alibi was raised by the appellant in Criminal Appeal No.1067 of 2000, which would complete the chain.

12. In the light of evidence tendered by the prosecution, this Court will have to decide whether the abovestated circumstances relied upon by the prosecution are proved.

12.1 In order to establish the first circumstance namely, the motive which prompted the appellants to kill the deceased, the prosecution has relied upon testimony of (1) Pramilaben Ratansing recorded at Exh.9; (2) Mehul Mahendrabhai Vyas recorded at Exh.16; and, (3) Ratansinh Ranvirsinh recorded at Exh.19.

12.2 Ms.Pramilaben Ratansinh, whose testimony is recorded as P.W.-2 at Exh.9, has stated in her evidence before the Court that deceased Ashok was her

spiritual brother and that the appellant in Criminal Appeal No.1046 of 2000 as well as deceased Ashok were visiting her house off and on. The witness has claimed in her testimony before the Court that as the deceased and the appellant in Criminal Appeal No.1046 of 2000 were visiting her house off and on, she was knowing that both of them were in love with each other. However, in her cross-examination, the witness has mentioned that no physical relations between the deceased and the appellant in Criminal Appeal No.1046 of 2000 had ever taken place in her house nor she had seen the deceased and the appellant in Criminal Appeal No.1046 of 2000 in a compromising position. The suggestion made by the defence that this witness herself had illicit relations with the deceased, is denied by her, but the statement made by this witness in her cross-examination that deceased Ashok was handsome and she herself had three real brothers, puts the Court on guard before considering the statement made by this witness to the effect that the deceased had illicit relations with the appellant in Criminal Appeal No.1046 of 2000. Normally, a woman having three real brothers would not treat another male not belonging to her caste as her spiritual brother nor would make a statement before the Court that her so-called spiritual brother was handsome. Similarly, witness Mehul Mahendrabhai Vyas, who is examined as

P.W.-4 at Exh.16, has made statement before the Court that the appellant in Criminal Appeal No.1046 of 2000 and his uncle Ashok had illicit relations. It is relevant to notice that Ms.Pramilaben has not claimed that there were illicit relations between the deceased and the appellant in Criminal Appeal No.1046 of 2000. What is stated by her before the Court is that the deceased and the appellant in Criminal Appeal No.1046 of 2000 were in love with each other whereas this witness has claimed in her testimony before the Court that the deceased and the appellant in Criminal Appeal No.1046 of 2000 had illicit relations. Witness Mehul has not given particulars nor stated the facts in support of his claim before the Court that the appellant in Criminal Appeal No.1046 of 2000 had illicit relations with his uncle deceased Ashok nor Ms.Pramilaben has given better particulars or stated the facts which would establish that the deceased was in love with the appellant in Criminal Appeal No.1046 of 2000. A close reading of the evidence of abovereferredto two witnesses makes it very clear that they have expressed their opinion about relations between the appellant in Criminal Appeal No.1046 of 2000 and the deceased and the evidence tendered by them cannot be considered to be sufficient to enable a Court of law to record a finding that it is proved by the prosecution that the deceased was in love with the

appellant in Criminal appeal No.1046 or that relations between two of them were illicit. Thus, it is not firmly established by the prosecution that there were illicit relations between deceased Ashok and the appellant in Criminal Appeal No.1046 of 2000.

12.3 Even if it is assumed for the sake of argument that sufficient evidence is led by the prosecution to establish that there were illicit relations between the deceased and the appellant in Criminal Appeal No.1046 of 2000, this Court fails to understand why the appellant in Criminal Appeal No.1046 of 2000 should kill the deceased because it is neither the case of the prosecution that the appellant in Criminal Appeal No.1046 of 2000 was inclined to discontinue her illicit relations with the deceased, but the deceased was insisting to maintain illicit relations with him nor it is the case of the prosecution that the illicit relations between the deceased and the appellant in Criminal Appeal No.1046 had become known to the appellant in Criminal Appeal No.1067 of 2000 and, therefore, with a view to get rid of the deceased, the deceased was killed by the appellant in Criminal Appeal No.1046 of 2000. Thus, there is no manner of doubt that the prosecution has failed to prove satisfactorily the motive which prompted the appellants to murder the deceased.

12.4 This Court is aware of the principles laid down by the Supreme Court in catena of decisions that the prosecution is not bound to prove motive of the offence in a criminal case inasmuch as the motive is known only to the perpetrator of crime and may not be known to others, but if the motive is proved by the prosecution, the Court has to consider it and see whether it is adequate. The motive gets locked up into mind of makers and it is difficult to fathom it. If the motive is proved, that would supply a chain of links, but normally absence thereof is not a ground to reject the prosecution case. In view of these principles, this Court does not propose to reject the prosecution case only on the ground that motive sought to be proved is not satisfactorily established. However, in a case based on circumstantial evidence, the motive for crime assumes much importance. In **Tarseem Kumar vs. Delhi Administration, A.I.R. 1994 SC 2585,** the Supreme Court has held that in a case, which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance and that the Investigating Agency as well as the Court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. It is true that mere absence of

proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established, but in incidents in which the only evidence available is circumstantial evidence then in that event the motive does assume importance if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime. It the established circumstances along with explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime then the chain of evidence may be considered to show that within all human probability the crime must have been committed by the accused. As observed earlier, absence of motive may not be fatal to the prosecution but when the prosecution alleges motive and fails to prove it, such failure assumes importance in a case based on circumstantial evidence.

12.5 Viewed in the light of principles stated above, this Court is of the opinion that failure on the part of the prosecution to establish the motive which prompted the appellants to murder the deceased assumes importance. When there is absence of motive, the Court is put on guard to scrutinize other circumstances relied upon by the prosecution

carefully.

13. The second circumstance, which is sought to be relied upon by the prosecution, is that the deceased was last seen alive in the company of the appellant in Criminal Appeal No.1046 of 2000 on the fateful night between November 1, 1995 and November 2, 1995. In order to prove this fact, the prosecution has relied upon evidence of (1) witness Pramilaben recorded at Exh.9 and (2) witness Ratansinh recorded at Exh.19.

13.1 Witness Pramilaben in her testimony before the Court has stated that on November 1, 1995, at about 7.00 p.m. or 7.30 p.m., Shankutala, i.e. the appellant in Criminal Appeal No.1046 of 2000, had come to her house. According to her, on that day, they had decided to visit Mahadevi Restaurant situated near Sola Crossing to eat *bhajipanv* with their neighbours Girishbhai and Geetaben and, therefore, they had also invited Shankutala to join them, but Shankutala had declined the said offer. The witness has further stated that her son had asked Shankutala to go to her house as the witness and others were to go to Mahadevi restaurant for dinner, but Shankutala had insisted to stay at the house of witness. The witness has mentioned before the Court that they had returned home from Mahadevi restaurant at about 10.45 p.m. or 11.00

p.m. and at that time, Shankutala with the deceased and her children were present in her house. The witness has further stated before the Court that her son Manish had brought hotchpotch from the house of the deceased and that the deceased had taken dinner of bread as well as brinjal vegetable prepared by her with hotchpotch after which, all had chit-chatted. The witness has mentioned that at about 12 night, deceased Ashok had left her house saying that he was feeling sleepy and at that time Shankutala had also expressed her wish to go to her house and, therefore, she had asked Ashok to leave Shankutala to her house after which both of them had left her house and that Ashokbhai had gone to the house of Shankutala. This witness has further stated in her testimony that on the next day, the nephew of Ashokbhai had visited her house and made inquiries whether the deceased was at her house whereupon she had informed Mehul that his uncle had visited her house during the night hours and that he had left her house in the company of Shankutala. The witness has also mentioned that on learning from her that the deceased had left the house of this witness in the company of Shankutala, Mehul had returned home after which, she had asked her son Manish to visit the house of Shankutala, but Shankutala had not opened the doors of her house and stated from the window that Ashok had come to her

house for a while and left her house immediately. According to this witness, after half-an-hour, Shankutala Shetty had come to her house and had mentioned before her that Ashok had come to her house, but left the same within half-an-hour. The witness has further mentioned that at about 11.00 p.m., on November 2, 1995, she in the company of her friend Renuka had visited the house of Shankutala and at that time, Shankutala was found confused. The witness has asserted before the Court that she had asked Shankutala as to whether Ashok had gone to her house, but no reply was given by Shankutala and that filthy smell of blood was coming out from the house of Shankutala whereas the articles in her house were lying scattered.

13.2 However, in her cross-examination, the witness has admitted in terms that on November 1, 1995 neither Shankutala had come to her house at about 7.30 p.m. nor she had found Shankutala and Ashokbhai at her home after she in the company of her husband had returned home from Mahadevi restaurant. Again, she has admitted in her testimony that it was not true that on November 1, 1995, Shankutala was present in her house from 7.30 p.m. to 11.00 p.m., when she had returned home after eating *bhajipanv.* The witness has, in terms, admitted before the Court that the fact that

Shankutala was present in her house from 7.30 p.m. to 11.00 p.m. on November 1, 1995 was conveyed to her by two sons. In her cross-examination, the witness has further stated that it was not stated by her in her police statement that her son had asked Shankutala to go to her house as the witness and others had decided to visit a restaurant for the purpose of eating *bhajipanv* and that Shankutala had stayed at her house. It was asserted by the witness in her cross-examination that it was stated by her in her police statement that when they had returned home at about 10.45 p.m. or 11.00 p.m., she had found Shankutala, Ashok and her two children present in the house and that all those persons had dinned at her house after her son Manish had brought hotchpotch from the house of Ashok and that Ashok had taken dinner of brinjal vegetable, bread, etc. after which they had chit-chatted. However, during the cross-examination of Investigating Officer Mr.Chavda, these contradictions have been proved, which is quite evident from the statements made by Mr.Chavda in paragraph 18 of his testimony. From the testimony of Investigating Officer Mr.Chavda, it is evident that it was not stated by this witness in her police statement that Shankutala had informed Manish that Ashok had stayed for a while at her home and, thereafter, left the same immediately. Further, paragraph 25 of the testimony of

the Investigating Officer makes it very clear that this witness had stated before the Police that at about 10 p.m. or 10.30 p.m., Girishbhai, who is friend of her husband, as well as wife of Girishbhai, i.e. Smt.Geetaben, had come and, thereafter, they all had gone near Sola Railway Crossing to eat *bhajipanv.* It is further evident from paragraph 28 of the testimony of witness Mr.Chavda that it was never stated by this witness in her police statement that she had informed Mehul that his uncle had come during the night hours and had left her house with Shankutala. A close scrutiny of the testimony of this witness makes it very evident that neither it is proved by her that Shankutala, i.e. the appellant in Criminal Appeal No.1046 of 2000, had visited her house at 7.00 p.m. or 7.30 p.m. on November 1, 1995 nor it is proved by her that she had seen that the deceased had left her house in the company of Shankutala. As observed earlier, she has, in terms, stated that she had come to know from her sons that Shankutala was at her house from 7.30 p.m. to 11.00 p.m. on November 1, 1995. It is relevant to notice that none of the sons of this witness is examined by the prosecution in this case. Therefore, the information conveyed by sons of this witness to the witness will have to be regarded as hearsay evidence and cannot be relied upon. On the facts and in the circumstances of the case, this Court

is of the opinion that the fact that the deceased was last seen alive in the company of the appellant in Criminal Appeal No.1046 of 2000 does not stand firmly established through the testimony of Pramilaben.

13.3 Ratansinh Ranvirsinh, who is husband of Pramilaben and who is examined at Exh.19, in his evidence before the Court has stated that at about 7.30 p.m. on November 1, 1995, Shankutala had visited her house and that at about 10.00 p.m., his friend Girishbhai with his wife had also visited her house. The witness has mentioned that thereafter, he in the company of his wife and Girish and his wife had visited Mahadevi restaurant situated on Sola Road for the purpose of eating *bhajipanv.* The witness has mentioned that when he was at Mahadevi restaurant, he had received a telephonic message from Ashok asking him to bring *bhajipanv* for him also. The witness has also mentioned that stock of *bhajipanv* was exhausted and, therefore, he was not able to bring *bhajipanv* for deceased Ashok. The witness has stated that, therefore, they had returned home and he had found that Shankutala and deceased Ashok were sitting in his house. The witness has mentioned that after sometime, his friend Girish had left his house with his wife, but Shankutala and Ashok had stayed in her house till 12.30 a.m. to 1.00 a.m. According to this witness,

thereafter, Shankutala Shetty, Ashok and he himself had come out of his house after which Ashok and Shankutala had gone inside the house of Shankutala and he had returned to his house smoking a *bidi.* The witness has mentioned that thereafter, he had gone to bed and at about 7.00 a.m., in the morning, Mehul, who is nephew of deceased Ashok, had come to his house to make inquiry about Ashok. The witness has stated that he had informed Mehul that Ashok was not present in his house and thereafter, he had asked his son to visit house of Shankutala. The witness has mentioned that when his son had visited the house of Shankutala, Shankutala had not opened the door and replied from the window that Ashok had not come to her house. According to this witness, in the noon, Shankutala Shetty had visited his house and told his wife that Ashok had stayed at her house for half-an-hour and thereafter, left her house. The witness has further stated that on November 4, 1995 at about 12.45 hours in night, Shankutala Shetty had come to his house and asked him to go with her to bring her husband who had joined a new service in a hotel situated on highway whereupon he had told Shankutala that hotels were being closed at 12 midnight and, therefore, her husband would return her home immediately and, therefore, Shankutala had gone towards her house. The witness has mentioned before the Court that he had his

own doubts and, therefore, had chased Shankutala and had knocked the door of house of Shankutala, whereupon, the door was opened and he had found that Shankutala and her husband were present inside the house of Shankutala. The witness has mentioned that if he had accompanied Shankutala, he also would have been killed. According to this witness, he had told Shankutala that her husband was in the house and that why she had come to his house, whereupon, Shankutala had told her that her husband had returned the home then only.

13.4 This witness is cross-examined by the defence and he was confronted with his earlier police statement. One of the glaring discrepancies in the testimony of this witness and his wife is that his wife has not stated that her husband had also gone out of her house along with the appellant in Criminal Appeal No.1046 of 2000 and deceased Ashok, but this witness has asserted that he had also accompanied Shankutala as well as the deceased and returned home after Shankutala and the deceased had entered the house of Shankutala. The cross-examination of Investigating Officer Mr.Chavda makes it very clear that this witness had not stated in his police statement that he had received telephonic message from Ashok to bring *panvbhaji* for him when the witness

was at the restaurant nor it was stated by him that he had left his house with Shankutala Shetty and Ashok and that he had returned home smoking *bidi* after Ashok and Shankutala had gone inside the house of Shankutala. The statement made by the Investigating Officer in paragraph 22 of his testimony makes it very clear that this witness had not stated in his police statement that at about 12.45 midnight on November 4, 1995, Shankutala had come to his house and asked him to go with her on highway to bring her husband home who had joined a new service in a hotel situated on highway and that he had told Shankutala that as the hotels were closing at 12.00 midnight, her husband would return immediately, whereupon Shankutala had gone towards her house and that he had chased her and on knocking the door of her house, found that Shankutala and her husband were present inside the house of Shankutala and he had felt that if he had accompanied Shankutala, he would have been killed.

13.5 The review of the evidence on record makes it very evident that witness Pramilaben as well as witness Ratansinh have made major improvements in their respective testimony recorded before the Court. It is true that in sifting the evidence, the Court is to attempt to separate the chaff from the grains in every case and the Court cannot abandon the attempt on

the ground that the case is baffling. However, the evidence in this case really is so confusing and conflicting that it is not possible to carry out the process of separating the chaff from the grains in a reasonable manner. The doctrine of separation of grain from chaff does apply when the grain is separable from the chaff. However, when it is not separable because the truth and falsehood have intrinsically mixed up and that in the process of separation, the Court will have to reconstruct an absolute new case for the prosecution by divorcing the essential details of the prosecution case completely from the context, then the principle does not apply. Here in this case, truth and falsehood in the evidence of abovereferredto two prosecution witnesses have so intermingled that it is impossible to separate them and, therefore, their evidence will have to be rejected in entirety.

13.6 The net result of the above discussion is that it is not satisfactorily established by the prosecution that deceased Ashok was last seen alive in the company of the appellant in Criminal Appeal No.1046 of 2000 on the fateful night between November 1, 1995 and November 2, 1995. Even otherwise, as explained by the Supreme Court in **Arjun Marik & Others vs. State of Bihar, 1994 Supp (2) SCC 372,** the only circumstance of last seen will not complete the chain

of circumstances to record a finding that it is only consistent with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.

14. Yet another circumstance, which is sought to be relied upon by the prosecution, is that after the murder of the deceased, the dead body was cut into pieces and the cut-pieces of the body with stones and bricks were placed in seven transparent plastic bags, which were carried by the appellant in Criminal Appeal No.1067 of 2000 on his cycle to the pond of Village Godhavi and the plastic bags were thereafter thrown into the pond. In order to prove this fact, the only evidence placed by the prosecution before the Court is recovery of cycle of the appellant in Criminal Appeal No.1067 of 2000, which was found lying near Shivam Snacks Parlour, Gurukul Road, Ahmedabad. The testimony of witness Jalubhai Bijalbhai Desai, recorded at Exh.41, indicates that on November 7, 1995, he was asked by the Police Officer of Ghatlodiya Police Station to act as panch-witness and that in his presence a person, who was present at the Police Station, had shown his willingness to point out his cycle, which was lying on Gurukul Road. The witness has mentioned that after drawing preliminary panchnama, the witness had accompanied the Police

Officer and the person, who had shown his willingness to point out his cycle lying on Gurukul Road and that they all had gone to Gurukul Road where from the cycle was found and seized. The panchnama indicating seizure of cycle at the instance of the appellant in Criminal Appeal No.1067 of 2000 is proved and produced by the then Senior Police Inspector of Ghatlodiya Police Station Mr.Pande at Exh.71, whose testimony is recorded at Exh.70. It indicates that the cycle, which was found lying near Shivam Snacks Parlour on Gurukul Road, was seized on November 7, 1995 under a panchnama, which was drawn between 7.25 hours and 18.30 hours. Though the prosecution has proved that on November 7, 1995 cycle belonging to the appellant in Criminal Appeal No.1067 of 2000 was recovered, this Court fails to understand as to why the said appellant, who is a man of meagre means should leave his cycle on Gurukul Road unattended for all those days more particularly when the cycle was not found to be bloodstained. It is relevant to notice that the said cycle was not found to be bloodstained at all. Except, the recovery of cycle belonging to the appellant in Criminal Appeal No.1067 of 2000, no evidence worth the name is adduced by the prosecution to prove the fact that after murder of the deceased, his dead body was cut into pieces and, thereafter, the cut-pieces with bricks and stones were placed in seven

transparent plastic bags, which were carried by the appellant in Criminal Appeal No.1067 of 2000 on his cycle to the pond of Village Godhavi and the plastic bags were thrown into the pond. In fact, none of the prosecution witnesses has stated before the Court that on fateful night between November 1, 1995 and November 2, 1995, the appellant in Criminal Appeal No.1067 of 2000 was present in his house when the appellant in Criminal Appeal No.1046 of 2000 had entered into the house with deceased. As such, the case of the prosecution against the appellant in Criminal Appeal No.1067 of 2000 stands on a very weak footing and it is difficult for the Court to accept the same.

15. The another circumstance relied upon by the prosecution to prove the guilt of the appellants is that on November 6, 1995, the house of the appellants was searched, which resulted into find of bloodstained frock, *lungi,* pillow-cover, etc. and that the blood group on these articles was the same as that of the deceased which, in turn, would establish that the appellants had killed the deceased in their house and were in close proximity of the deceased when the deceased was fatally wounded. While considering this circumstance, it is necessary to notice the case of the prosecution, which is that after causing murder of the deceased, the appellants had cut his dead body

into pieces and the cut-pieces of the body with stones and bricks were placed in seven transparent plastic bags, which were thrown into the pond of Village Godhavi. If the appellants had caused disappearance of the evidence of offence, they would not have failed to cause disappearance of bloodstained clothes which, according to the prosecution, were found from the house of the appellants on November 6, 1995. Therefore, the case of the prosecution that the bloodstained clothes having the same blood group as that of the deceased, were found from the house of the appellants on November 6, 1995 itself becomes doubtful. Even if it is assumed for the sake of argument that the bloodstained clothes were seized from the house of the appellants on November 6, 1995 as claimed by the prosecution, the find of the same group of blood as that of the deceased on those articles would not indicate that the appellants were in close proximity of the deceased when the deceased was fatally wounded because in this case, the blood group of none of the appellants was ever ascertained. There was every possibility that the blood group of both the appellants or any one of them was the group, which was found on the articles seized from their house and, therefore, the find of the same group of blood as that of the deceased on the articles seized from the house of the appellants cannot be regarded as

an incriminating circumstances against the appellants.

16. The last circumstance sought to be relied upon by the prosecution is about raising of false plea of alibi by the appellant in Criminal Appeal No.1067 of 2000. In this regard, the Court notices that the said appellant in his further statement recorded under Section 313 of the Code claimed that on the day of incident, he was at Mumbai. In this regard, the Court further notices that Senior PI Mr.Pande of Ghatlodiya Police Station has, in his cross-examination, stated that police statement of brother of the appellant in Criminal Appeal No.1046 of 2000, i.e. Shankutala, was recorded at Bombay by PSI Mr.B.M.Patel. Mr.Pande has further stated in his cross-examination that he had not taken into custody railway-ticket dated April 30, 1995 of Gujarat Mail from the appellant in Criminal Appeal No.1067 of 2000 indicating his travel by Gujarat Mail on April 30, 1995 nor he had recorded statement of any witness indicating that the said appellant was at Bombay on April 30, 1995, May 1, 1995 and May 2, 1995. Again, Mr.Pande has stated in his testimony that he had recorded statements of Mr.Bhasker Shetty and Ms.Sulochana Shetty, indicating that the appellant in Criminal Appeal No.1067 of 2000 was at Bombay on October 30, 1995, October 31, 1995 and November 1, 1995. Mr.Pande has claimed before the

Court that he had not thought it necessary to examine Mr.Bhasker Shetty or Ms.Sulochana Shetty as witnesses and, therefore, they were not cited as witnesses in the charge-sheet. It is also mentioned by him that he had not recorded police statement of PSI Mr.B.M.Patel, who had recorded statement of Mr.Bhasker Shetty. Thus, the testimony of Senior PI of Ghatlodiya Police Station makes it very clear that the plea of alibi was not properly investigated by the Police and, therefore, it is wrong to contend that the plea of alibi was not probabilized by the appellant in Criminal Appeal No.1067 of 2000. In any view of the matter, no concrete evidence has been led before the Court to establish complicity of the appellant in Criminal Appeal No.1067 of 2000 in the murder of the deceased and, therefore, failure on his part to probabilize this plea of alibi is of little assistance to the prosecution.

17. The net result of the above discussion is that the circumstances from which the conclusion of guilt of the appellants is to be drawn, are not fully established. The facts established by the prosecution are not consistent only with hypothesis of the guilt of the appellants. The circumstances are not of conclusive nature and/or tendency nor they are such as to exclude every hypothesis except the one sought to

be proved. The chain of evidence is not complete as not to leave any reasonable ground for conclusion consistent with the innocence of the appellants. The prosecution has failed to prove that within all human probability, the act of murder of deceased Ashok was done by the appellants. Therefore, the appellants are entitled to reasonable benefit of doubt arising from the facts of the case.

18. For the foregoing reasons, the appeals succeed. Judgment dated September 30, 2000 rendered by the learned Additional Sessions Judge, Ahmedabad (Rural), Mirzapur, Ahmedabad, in Sessions Case no.110 of 1996 convicting the appellant in Criminal Appeal No.1046 of 2000 as well as the appellant in Criminal Appeal No.1067 of 2000 for commission of offences punishable under Sections 302, 120B & 201 of the Indian Penal Code and sentencing each of them to R.I. for life and fine of Rs.1,000/-, in default S.I. for three months, for commission of offence punishable under Section 302 IPC as well as R.I. for one year and fine of Rs.500/-, in default S.I. for one month, for commission of offence punishable under Section 120B IPC and R.I. for one year and fine of Rs.500/-, in default S.I. for three months, for commission of offence punishable under Section 201 IPC, is hereby set aside. Instead the appellant in Criminal Appeal

No.1046 of 2000 and the appellant in Criminal Appeal No.1067 of 2000 are acquitted. The respondent shall set at liberty each appellant unless her/his presence is needed in Jail with reference to any other case. Muddamal be disposed of in terms of directions given by the learned Judge of the trial Court in the impugned judgment. Direct Service is permitted.

[J.M.PANCHAL, J.]

[J.R.VORA, J.]

Rajendra